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SUPREME COURT U. S.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1968

No. 705

JOSEPH Q. CIPRIANO,

Appellant,

versus

CITY OF HOUMA, G. LESLIE BROUSSARD, Mayor, CHRISTIAN L. OLIVIER, CHARLES DAVIDSON, PETER BOURGEOIS, JR., SAMUEL LUSCO and WILBERT P. BONVILLAIN,

Appellees.

On Appeal from the United States District Court for the Eastern District of Louisiana

MOTION FOR LEAVE TO FILE BRIEF AND BRIEF OF AMICUS CURIAE AND OF INTERVENOR

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May It Please the Court:

The State of Louisiana and the Louisiana Municipal Association file this joint brief with motion for leave for the latter to file brief amicus curiae pursuant to Rules 10, 40, 41 and 42, the said State of Louisiana and Louisiana Municipal Association having been, respectively, intervenor and *amicus curiae* in the court below.

IN THE

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No. 705

JOSEPH Q. CIPRIANO,

Appellant,

versus

CITY OF HOUMA, G. LESLIE BROUSSARD, Mayor, CHRISTIAN L. OLIVIER, CHARLES DAVIDSON, PETER BOURGEOIS, JR., SAMUEL LUSCO and WILBERT P. BONVILLAIN,

Appellees.

On Appeal from the United States District Court for the Eastern District of Louisiana

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

May It Please the Court:

This motion is filed on behalf of the State of Louisiana and on behalf of the Louisiana Municipal Association, which is composed of the incorporated cities, towns and villages of the State of Louisiana. The issues raised in this litigation have application to most, if not all, of the incorporated municipalities in the State of Louisiana, and to all other politi-

cal subdivisions of the State of Louisiana which are required under the provisions of the Louisiana Constitution to secure the approval of the qualified taxpaying electors thereof prior to issuing and selling securities commonly known as "municipal bonds." The issues raised in this litigation also have application to those private investors and financial concerns located in the State of Louisiana, and elsewhere which deal in, own and sell municipal bonds.

Petitioner believes that the decision of the trial court should be affirmed but, if it is not, sets forth as follows its reasons for believing that certain questions of law will not be adequately presented by the parties and their relevancy to the disposition of the case. Appellant and the City of Houma are concerned with one particular bond issue voted at one particular election and the broader question of whether and how a judicial precedent might operate to affect other political sub-divisions is of no particular concern to either. The City of Houma, in the face of an adverse decision, regardless of how prospective or retroactive might be the effect of the precedent established by the decision of this court, would be required to hold another election to issue the bonds involved if the court grants the relief sought by the Appellant. Likewise, the Appellant has no particular interest in the retroactive or prospective nature of such precedent, as Appellant's interest is in preventing the issuance of the particular bonds involved. For this reason the petitioner feels that neither the Appellant nor the City of Houma is in a position to point out to the court the arguments and considerations involved in the prospective or retroactive nature of the judicial precedent established by a decision such as that sought by the Appellant.

These arguments and considerations are relative to the

disposition of this case because of the great public importance of the issues here involved. Statutory or constitutional provisions in fourteen states restrict the right to vote in some or all bond elections to taxpayers or property owners. A decision casting doubt on the constitutionality of elections authorizing the outstanding bonds of political sub-divisions in said states could result in great public hardship even if the courts of last resort, or the legislatures, or the people of said states by constitutional amendments, should eventually take whatever steps might be required from state to state to render such bonds legally binding despite the nature of the elections at which they were authorized. If such courts, legislatures or people by constitutional amendment should fail to take such steps, the innocent holders of the bonds so voted could find their investments wiped out. Even if no doubt were cast upon the validity of outstanding bonds, a decision which cast doubt on the right of political subdivisions of those states to issue bonds voted at elections, heretofore held, at which only qualified electors who were taxpayers or property owners at the time of the election were permitted to vote, would prevent the issuance of such bonds altogether pending action of the state legislatures or amendments to the state constitutions because purchasers of bonds (who are responsible for ascertaining that their bonds are legally issued*), require assurance that the legality of such investments will not be successfully challenged.

For the reasons stated above petitioner respectfully moves that the Court grant leave to file a brief amicus curiae, which

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* 15 McQuillin, Municipal Corporations, 3rd Edition, p. 484 et seq., Section 43.13 and cases therein cited.

brief is a joint brief of both the petitioner and of the State of Louisiana, Intervenor in the court below.

Respectfully submitted,

John V. Parker

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Post Office Box 1588
Baton Rouge, Louisiana 70821

CERTIFICATE

I, the undersigned counsel for petitioner, Louisiana Municipal Association, do hereby certify that a copy of the foregoing motion has been served on all counsel in this matter by depositing a copy thereof in the United States Mail, postage prepaid, addressed to each of them at his respective address of record.

Baton Rouge, Louisiana, this____day of_____, 1969.

_____

John V. Parker

IN THE

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JOSEPH Q. CIPRIANO,

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CITY OF HOUMA, G. LESLIE BROUSSARD, Mayor, CHRISTIAN L. OLIVIER, CHARLES DAVIDSON, PETER BOURGEOIS, JR., SAMUEL LUSCO and WILBERT P. BONVILLAIN,

Appellees.

On Appeal from the United States District Court for the Eastern District of Louisiana

BRIEF FOR THE STATE OF LOUISIANA AS INTERVENOR AND THE LOUISIANA MUNICIPAL ASSOCIATION AS AMICUS CURIAE

STATEMENT

The State of Louisiana, as intervenor, and the Louisiana Municipal Association, as amicus curiae, adopt the statement of this case appearing in the brief of the City of Houma, Louisiana, the Appellee.

INTEREST OF AMICUS CURIAE

The interest of the Louisiana Municipal Association in

this cause is shown in the Motion for Leave to File Brief Amicus Curiae filed herewith.

SUMMARY OF ARGUMENT

Because of the great public importance of the right of Municipalities in Louisiana and thirteen other states to finance public improvements in a manner which can be relied on to establish the validity of bonds issued to pay therefor, it is argued that the decision below should be affirmed; if it is not affirmed, a reversal should be prospective only in its effect, should show that the rule requiring such reversal applies only to elections called after the date of the decision of this Court, and should show whether said rule applies to revenue bonds alone or to all bonds of political sub-divisions.

ARGUMENT

The State of Louisiana and the Louisiana Municipal Association are concerned that a decision granting the relief sought by the Appellant and declaring that all provisions of the Constitution and Laws of Louisiana which restrict voters in revenue bond elections to taxpayers are void in violation of the Fourteenth Amendment to the Constitution of the United States, would result in the establishment of a judicial precedent applicable to other Louisiana bond election laws and to the laws of all states under which similar bond elections are held. Such a judicial precedent, if retroactive in its application, would cast doubt on the legality of outstanding bonds voted at such elections and, if it should be determined that said outstanding bonds are illegal, all cities in said states would suffer by virtue of inability lawfully to pay the same and thus retain their credit standing and to issue bonds or otherwise borrow money on favorable terms in the future. If

such relief were granted to the Appellant pursuant to a decision which establishes a precedent prospective only in nature, further clarification would be required for the issuance of bonds other than revenue bonds and for the issuance of any bonds voted at elections called or held prior to the date of such decision of this Court. As cities often choose not to issue all bonds of a voted issue at one time, but to defer the issuance of a portion of them until proceeds are needed, a decision which would prevent the issuance of bonds so voted but not yet issued might result in many cities' being unable to issue the bonds necessary to obtain the money required to complete the projects for which some bonds voted at said elections have already been issued.

It is the contention of the State of Louisiana as Intervenor and the Louisiana Municipal Association as Amicus Curiae, first of all, that the decision of the Three Judge Federal Court in the case below should be affirmed. Arguments in favor of this proposition, in which said Intervenor and Amicus Curiae concur, appear in the brief of the Appellee and need not be reiterated here. Intervenor and Amicus Curiae further state that a reversal of the decision of the trial court would, very possibly, result in substantial disruption of the orderly process of financing public improvements by political subdivisions in the fourteen states mentioned below.

Without in any way diminishing the strength of their contention that the decision of the trial court should be affirmed, Intervenor and Amicus Curiae feel that their interest in the outcome of this case can best be served by pointing out ways by which this court could, if it feels it must reverse the trial court, reduce to a minimum the public confusion resulting from such decision.

Constitutional and Statutory Provisions of States Having Property Ownership or Taxpayer Requirements for Bond Elections

The following summary will show the variety of the requirements which exist in the United States for taxpayer or property ownership qualifications to vote in bond elections. Variety exists with respect to (a) the section of the country in which the state lies, (b) the nature of the issuer and (c) the source of payment of the bonds; there is no single formula common to all states which have such requirements.

Alaska Constitution, Article V, Section 1, dealing with qualifications of voters: "Additional voting qualifications may be prescribed by law for" bond issue elections of political subdivisions. Section 29.50.020 of the Alaska Statutes states that municipal corporations may not incur bonded indebtedness without submitting a proposal to incur the same to the qualified voters and further provides that the "governing body of the municipality may prescribe additional voting qualifications for bond issue elections." Alaska Statutes, Section 42.35.300 prohibits a public utility district from incurring indebtedness unless the proposal is submitted at an election. "Only the qualified voters of the district whose names appear on the last assessment roll or tax record are eligible to vote at the election." Section 07.30.010 contains similar requirements as to bond elections in boroughs which, in Alaska, perform local governmental functions outside of incorporated cities.

Arizona Constitution, Article 7, Section 13: "Questions upon bond issues or special assessments shall be submitted to the vote of real property taxpayers who shall also in all re-

spects be qualified electors of this State and of the political sub-divisions thereof affected by such question." Article 9, Section 8 of said Constitution provides that no county, city, town, school district, or other municipal corporation may become indebted in excess of 4% of the taxable property therein "without the assent of a majority of the property taxpayers, who must in all respects be qualified electors, voting at an election provided by law to be held for that purpose . . . ." Such qualifications are required regardless of whether the election is on bonds payable from ad valorem property taxes or bonds payable from other sources. *Ackerman v. Boyd*, 74 Ariz. 77, 244 P.2d 351.

Colorado Constitution, Article XI, Sections 6, 7 and 8, provide that no county, school district or city or town may contract "any debt by loan in any form" unless the proposition to incur or create it has been submitted "to such qualified electors of such county as in the year last preceding said election have paid a tax upon property assessed to them in such county and a majority of those voting thereon shall vote in favor of incurring the debt . . . ." The same requirement appears for school districts except the electors must have paid a school tax in the district and, with respect to cities, they must have paid a property tax in the city. All bonds payable from ad valorem property taxes are held to constitute "debt by loan" but most revenue bonds are not "debt" and are not voted. *City of Trinidad v. Haxby*, 136 Colo. 168, 315 P.2d 204, *Pearl-Mack Civic Ass'n v. Board of Directors*, 140 Colo. 371, 344 P.2d 685, *Ginsberg v. City and County of Denver*, ___ Colo. ___, 436 P.2d 685.

Florida Constitution of 1885, Article IX, Section 6, provides that counties, districts or municipalities "shall have

power to issue bonds only after the same shall have been approved by a majority of the votes cast in an election in which a majority of the freeholders who are qualified electors residing in said counties, districts or municipalities shall participate . . . ." At the election of November 5, 1968, the voters of the State of Florida adopted a revised constitution taking effect January 7, 1969. The corresponding provision of the new constitution provides that counties, school districts, municipalities, special districts and local governmental bodies with taxing powers may issue bonds or other obligations payable from ad valorem taxation and maturing more than twelve months after issuance "only when approved by a vote of the electors who are owners of freeholds therein not wholly exempt from taxation." Under the 1885 Constitution the word "bonds" was held to include revenue bonds secured by a mortgage on the public utilities of which the revenues were pledged to pay the obligations (*Broward County Port Authority v. State*, 129 Fla. 73, 175 So. 796; *Boykin v. Town of River Junction*, 121 Fla. 902, 164 So. 588), or secured by pledge of gross revenues when operation and maintenance of the facilities involved must be paid for from ad valorem taxation (*Kathleen Citrus Land Co. v. City of Lakeland*, 124 Fla. 659, 169 So. 356), but did not include other obligations payable solely from funds derived from sources other than ad valorem property taxes, including utility revenues, cigarette taxes, utilities taxes and franchise fees. *Town of Medley v. State of Florida*, 162 So. 2d 257.

Idaho Constitution, Article VIII, Section 3, prohibits political sub-divisions from incurring "any indebtedness or liability in any manner or for any purpose, exceeding in that year the income and revenue provided for it for such year, without the assent of two-thirds of the qualified electors thereof voting at an election to be held for that purpose . . ." and

provided further that revenue bonds for water, sewer and off-street parking purposes might be issued "with the assent of two-thirds of the qualified electors voting at an election to be held for that purpose . . . ." Article VI, Section 4, of the Idaho Constitution provides that the legislature may prescribe additional qualifications for the right of suffrage beyond those prescribed by the remainder of Article VI. The various provisions of the Idaho Code relating to bonds of cities, counties and school districts (50-1026, 31-1905, and 33-404, respectively) provide that only real property taxpayers (and, in counties and school districts, their wives and husbands) may vote in elections on bonds payable from ad valorem property taxes and Section 50-1035 of the Idaho Code provides that all qualified electors may vote in city revenue bond elections. In school district bond elections, contract purchasers of real estate may qualify.

Louisiana Constitution, Article XIV, Section 14(a) provides that political subdivisions may "incur debt and issue negotiable bonds when authorized by vote of a majority, in number and amount, of the property taxpayers qualified to vote under the Constitution and laws of this state who vote at an election held for that purpose . . . ." Article XIV, Section 14(m), provides for the issuance of revenue bonds secured by a pledge of the income and revenues of the utility involved and provides that "the legislature may in its discretion, require an election by the taxpaying voters of the subdivision or district as a condition precedent to the issuance of such bonds . . . ." The legislature has enacted two revenue bond laws in Louisiana, one of which (33:4221 et seq.) requires a mortgage on the public utility and an election at which all qualified electors vote, and the other of which (R.S. 33:4251 et seq.) does not contemplate a mortgage and, when this suit was in-

stituted, provided that the bonds be voted in the same way as general obligation bonds. This latter law is the law under which the bonds of the City of Houma which are the subject to this litigation were voted and was amended by Act 33 of the 1968 special session of the Legislature to provide that the governing body may decide whether to hold a taxpayer's election or an election at which all qualified electors may vote.

Michigan Constitution, Article II, Section 6, provides that whenever a question is required to be submitted to the electors of a political subdivision for the issue of bonds "only electors in, and who have property assessed for any ad valoren. taxes in, any part of the district or territory to be affected by the result of such election or electors who are the lawful husbands or wives of such persons shall be entitled to vote thereon." Revenue bonds are not considered as falling within said requirement, and are issued subject to referendum upon the filing of a sufficient petition under Section 33 of the Revenue Bond Act of 1933 (C.L. '48, Section 141.133, M.S.A. Section 5.2763). At such referendum all qualified electors may vote.

Montana Constitution, Article IX, Section 2, setting forth the qualifications of voters generally provides: "If the question submitted concerns the creation of any levy, debt or liability the person, in addition to possessing the qualifications above mentioned, must also be a taxpayer whose name appears upon the last preceding completed assessment roll, in order to entitle him to vote upon such question." Article XIII, Section 5, requires bond elections for county bonds and Sections 11-2306, 11-2310, 11-2404 and 75-3908 of the Revised Codes of Montana require such elections on all city and school district bonds, including city revenue bonds.

New Mexico Constitution, Article 9, Section 12, provides for the contracting of debt of cities, towns or villages and provides that no such debt shall be created unless the question of incurring the same shall "have been submitted to a vote of such qualified electors thereof as have paid a property tax therein during the preceding year and a majority of those voting on the question . . . shall have voted in favor of creating such debt." A recent amendment to said section provides that qualified voters of the county in which a city, town or village is located and in which they own taxable property are to be deemed qualified to vote at a bond election therein even though they do not reside in the city, town or village. Only qualified resident taxpayers vote in elections on the borrowing of money by counties under Article 9, Section 10, and by school districts under Article 9 of Section 11 of the Constitution. Revenue bonds and bonds secured by certain excise taxes may be issued without an election if approved by ¾ of the governing body; if approved by a majority less than ¾ of the governing body, such bonds are voted by all qualified electors under Section 14-30-4 of the New Mexico Statutes, 1953.

New York Local Finance Law, Section 33.10, provides that most bonds are issued without an election; however, sometimes the taxes to pay such bonds must be voted under Section 233 of the County Law and at any such bond or tax election all qualified voters participate under Article 3 of the County Law. Section 34.00 of the Local Finance Law provides that a city may adopt a local law requiring that resolutions authorizing bonds be subject to a mandatory or permissive referendum and further provides that such a local law shall prescribe the qualifications of voters at such referendum. The Town Law, Section 84, provides that "No person shall be en-

titled to vote upon any proposition for raising, appropriating or expending money or incurring any town liability, or for the sale or other disposition of town land or property, unless he or she is an elector of the town and the owner of property assessed upon the last preceding town assessment roll"; under Section 35.00 of the Local Finance Law many town bond issues are subject to mandatory or permissive referendum. New York Village Law, Section 4-402, requires that for a voter to vote upon a proposition he or she "must be entitled to vote for an officer and he or she must also be an owner of property in the village assessed upon the last preceding assessment roll thereof." This requirement applies to all acts of the Board of Trustees of a village which are subject to referendum under Section 139-a of the Village Law and such a referendum is permitted or required for bond issues by Section 36.00 of the Local Finance Law. Section 4-402 of the Village Law has been held unconstitutional as in violation of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States by a three judge federal court dictrict for the Southern District of New York in the case of *Butler v. Village of Ossining,* 37 L.W. 2257, involving a referendum on the proposition to adopt a village manager form of government. Local Finance Law, Section 37.00, provides that most bond and capital note resolutions cannot be adopted unless a tax has been voted under the Education Law. Section 2012 of the Education Law provides that a qualified elector must have certain qualifications, one of which may be status as a taxpayer; the constitutionality of this law is involved in the case of *Kramer v. Union Free School District*, Number 258 on the current docket of the Supreme Court of the United States which was argued January 16, 1969, in a situation involving the right to vote in school district elections generally and not just those

elections involving bonds or taxes. Revenue bonds are issued by counties, cities, towns and villages under Article 14C of the General Municipal Law, which does not require an election.

Oklahoma Constitution, Article X, Section 27, provides that an incorporated city or town "may, by a majority of the qualified property taxpaying voters of such city or town, voting at an election to be held for that purpose, be allowed to become indebted in a larger amount than that specified in Section 26, for the purpose of purchasing or constructing public utilities, or for repairing the same, to be owned exclusively by such city . . . ." Section 26 of that article contains a debt limit and an election requirement providing for the "assent of three-fifths of the voters thereof, voting at an election to be held for that purpose . . ." without regard to the taxpayer status of the voters. In practice, and under the Oklahoma Supreme Court decisions, all city and town bonds except road, street and highway bonds are voted under Section 27, the word "public utility" having been held to mean any public purpose but roads, streets and highways not falling within the category of "owned exclusively by said city." *City of Shawnee v. Williamson,* 338 P.2d 355. Article X, Section 27A of the Oklahoma Constitution provides that any city or town may, "after approval of the proposition by a majority of the qualified electors voting in an election . . ." contract and pledge revenues with other cities and towns, the state or the United States or any other governmental subdivision or agency of any of them for water purposes. Except for the limited purposes of Article X, Section 27A, revenue bonds cannot be issued by Oklahoma political subdivisions because of the requirement of Article X, Sections 26 and 27, that taxes sufficient to pay the bonds be imposed. *Application of City Council of City of Tahlequah*, 285 P. 2d 418.

Rhode Island Constitution. Amend. Article XXIX, Section 2, provides that, except as provided in Section 3, no person may vote on a proposition to impose a tax or for the expenditure of money "in any town as distinguished from a city, unless he shall be qualified under the provisions of Section 1 hereof and shall either (1) be really and truly possessed in his own right of real estate in such town of the value of $134 over and above all incumbrances, or which shall rent for $7 per annum over and above any rent reserved or the interest of any incumbrances thereon, being an estate in fee-simple, fee-tail, for the life of any person, or an estate in reversion or remainder, which qualifies no other person to vote, the conveyance of which estate, if by deed, shall have been recorded at least ninety days prior to the time of voting, or (2) shall within the year next preceding have paid a tax assessed upon his personal property in said town of the value of at least One Hundred Thirty Four Dollars." Such voting is required at town financial meetings and regional school district financial meetings when bonds are authorized under the foregoing provision and under Section 16-3-11 of the general laws of Rhode Island.

Texas Constitution, Article 6, Section 3-a, provides that when an election is held in a political sub-division "for the purpose of issuing bonds or otherwise lending credit, or expending money or assuming any debt, only qualified electors who own taxable property in the state, county, political sub-division, district, city, town or village where such election is held, and who have duly rendered the same for taxation, shall be qualified to vote . . . ." The Constitution does not require revenue bonds to be voted at an election, but when such an election is required by statute, only voters meeting the qualifications of Article 6, Section 3-a, may vote. *City of*

Richmond v. Allred, 123 T. 365, 71 S.W. 2d 233. General obligation bonds of counties, cities and towns must be voted at elections under Article 701 of Vernon's Civil Statutes; bonds of school districts must be voted under Article 2784a et seq. Some city and town revenue bonds for new construction must be voted under Article 1112, but revenue bonds for extensions and improvements on a parity with outstanding revenue bonds may be issued without an election unless a petition is filed under Articles 1118t and 2368a.

Utah Constitution, Article XIV, Section 3, provides that no county or subdivision thereof nor any school district or city, town or village may incur debt in excess of taxes for the current year "unless the proposition to create such debt shall have been submitted to a vote of such qualified electors as shall have paid a property tax therein, in the year preceding such election, and a majority of those voting thereon shall have voted in favor of incurring such debt." Under the decisions of the Supreme Court of Utah "debt" is incurred in the issuance of revenue bonds issued so as to be payable from revenues derived from sources other than or in addition to the facility for the acquisition of which the bonds are issued; thus revenue bonds to improve and extend an existing utility, payable from the revenues of the entire utility rather than the proportion allocable to the improvements and extensions acquired with bond proceeds, constitute "debt" and require an election the same as bonds payable from ad valorem property taxes. *Utah Power & Light Co. v. Ogden City*, 95 Utah 161, 79 P.2d 61.

The States of Nevada and Wyoming have constitutional provisions which preclude the legislature from restricting to taxpayers or property owners the right to vote in bond elec-

tions. Nevada Constitution, Article II, Section 1, Wyoming Constitution, Article XVI, Section 4. In these states the law provides that all qualified electors who meet a taxpayer or property ownership requirement vote on colored ballots and all other qualified electors vote on white ballots. In order to carry the election, the proposition must receive a majority of the votes cast on each set of ballots. Nevada Revised Statutes, Section 350.050, 350.070; Wyoming Statutes, Sections 22-130 et seq. The Wyoming Supreme Court after having previously held void a legislative attempt to restrict voters in bond elections to taxpayers only, in the cases of *Simpkin v. City of Rock Springs*, 33 Wyo. 166, 237 P. 245, and *West et al v. School District No. 9*, 37 Wyo. 36, 258 P. 583, upheld the two-colored ballot arrangement in the case of *State ex rel. Voiles v. Johnson County High School*, 43 Wyo. 494, 5 P.2d 255.

The Nevada and Wyoming situations illustrate that the right to vote in a bond election is the right of participating in a decision to exercise or to withhold the exercise of a veto power. This veto power, in Wyoming, when extended to non-taxpaying voters on a "separate but equal" basis was held by the Wyoming Supreme Court to satisfy the requirement of the Wyoming Constitution that such propositions be submitted to a "vote of the people."

In addition to the foregoing the South Carolina Constitution, Article II, Section 13, requires a petition signed by a specific percentage of the taxpayers or freeholders before a bond election is called. South Dakota Code, Chapter 45.2301, authorizes the dispensing with certain bond elections if 60% of all freehold voters of the town involved shall petition the Board of Trustees; and Chapter 45.24A02 provides that no

revenue bonds shall be issued unless a majority of the resident freehold voters petition the governing body or an election is held on the issuance of the bonds at which all voters vote.

The questions involved in local service districts, such as those organized for water, sewage, drainage, irrigation, fire protection, hospitals and other specific purposes are not discussed at length herein, except to point out to the court that a decision which raises a question about bonds of municipalities could also raise a question of bonds of some of these local service districts where, in some instances, the right to vote in bond elections is also restricted to taxpayers and property owners. In the State of Louisiana, gravity drainage districts under R.S. 38:1776 and 38:1783 require the voting of acreage taxes and forced contributions in accordance with the number of acres of land which each voter owns in the area involved.

Similar arrangements pertain in irrigation districts and agricultural improvement districts in Arizona under Arizona Revised Statutes, Sections 45-983 and 45-1641 et seq.; in Montana Irrigation Districts under Revised Code of Montana, Section 89-1311; in Nevada Irrigation Districts (election must carry in number of votes and acreage) under Nevada Revised Statutes, Section 539.553; and in New Mexico Irrigation Districts under New Mexico Statutes 1953, Section 75-22-15.

The following table, therefore, summarizes the states in which only taxpayers or property owners are permitted to vote in county, municipal, or school district bond elections. It does not include other local service districts, such as those created for water, drainage, irrigation, sewer or fire protection purposes.

Municipalities, Counties and School Districts Limiting Bond Election Voters to Taxpayers or Property Owners

State	Authority	Issuer	Type
Alaska	Alaska Statutes §07.30.010	Boroughs (including all school and other districts outside of cities)	All
Arizona	Constitution, Article 7, §13	All	All
Colorado	Constitution, Article XI, §§6, 7 and 8	All	General Obligation
Florida	Constitution 1885, Article 9, §6, Constitution 1969, Article 7, §12	All	General Obligation
Idaho	Constitution, Article 8, §3, I.C. §§50-1026, 31-1905, 33-404	All	General Obligation
Louisiana	Article XIV, §14(a) R.S. 33:4251 et seq.	All	General Obligation Revenue (without mortgage)
Michigan	Constitution, Article II, §6	All	General Obligation

State	Authority	Issuer	Type
Montana	Constitution, Article IX, §2, Article XIII, §5, R.C.M. §§11:2306, 11:2404, 75:3908	All	All
New Mexico	Constitution, Article IX, §§10, 11 and 12	All	General Obligation
New York	Town Law, §84, Village Law §4-402	Towns Villages	General Obligation
Oklahoma	Constitution, Article X, §27	Cities Towns	All but streets, highways and limited access facilities
Rhode Island	Constitution, Article XXIX, §2; Rhode Island Statutes, §16-3-11	Towns Regional School Districts	All
Texas	Constitution, Article 6, §3a	All	General Obligation
Utah	Constitution, Article XIV, §3	All	General Obligation Revenue Bonds (except for new construction or payable from special allocation)

Authority and Reasons for Prospective Application of Decision If It Reverses Trial Court

As the foregoing material illustrates, a decision reversing the trial court in the present case of *Cipriano v. City of Houma* would throw confusion into the public finance of over a dozen states. In order to minimize this confusion, if such a decision must be reached by this court, it is respectfully suggested that such decision show clearly what types of bonds the decision applies to and that only elections called and held after the date of such decision will be affected thereby.

Both the power of the court to render a decision which has prospective effect only and the reasons for the exercise of that power in this cause are shown by the following cases:

Allen v. State Board of Elections et al, 37 L.W. 4168, decided by this court on March 3, 1969, docket numbers [redacted], 26 and 36—October term, 1968, held that the elections of boards of supervisors of two Mississippi counties were held in violation of Section 5 of the Voting Rights Act of 1965 because a change in the law respecting the area from which each supervisor was to be elected was not submitted to the Attorney General of the United States or to a declaratory judgment of the federal district court of the District of Columbia. Nevertheless, the majority opinion declared:

> Appellants in the Mississippi cases have asked this Court to set aside the elections conducted pursuant to these enactments and order that new elections be held under the preamendment laws. The Solicitor General has also urged us to order new elections, if the State does not promptly institute §5 approval proceedings. We decline to take corrective action of such consequence, however.

> These §5 coverage questions involve complex issues of first impression—issues subject to rational disagreement. The state enactments were not so clearly subject to §5 that the appellee's failure to submit them for approval constituted deliberate defiance of the Act. Moreover, the discriminatory purpose or effect of these statutes, if any, has not been determined by any court. We give only prospective effect to our decision, bearing in mind that our judgment today does not end the matter so far as these States are concerned.

Reynolds v. Sims, 377 U.S. 533, 12 L.ed 2d 506, 84 S.Ct. 1362, held void, under the Fourteenth Amendment to the United States Constitution, the previously existing system of apportioning the membership of the Alabama Legislature. In looking at the problem of bringing state legislatures into compliance, the court declared as follows:

> In awarding or withholding immediate relief, a court is entitled to and should consider the proximity of a forthcoming election and the mechanics and complexities of state election laws, and should act and rely upon general equitable principles. With respect to the timing of relief, a court can reasonably endeavor to avoid a disruption of the election process which might result from requiring precipitate changes that could make unreasonable or embarrassing demands on a State in adjusting to the requirements of the court's decree.

The foregoing cases illustrate the willingness of this court to apply the requirements of overriding federal law to governmental and political practices of long standing prospectively so as to reduce to a minimum the disturbance which the change in governmental purposes would require. Additional cases on prospective overruling are discussed below.

Desist v. United States, 37 Law Week 4225, decided by this Court on March 24, 1969, docket number 12—October Term, 1968, upheld the conviction of a defendant in Federal District Court for conspiracy to import and conceal heroin although an important part of the government's evidence consisted of tape recordings of conversations among several of the petitioners in a New York City hotel room under circumstances which were declared violations of the Fourth Amendment to the United States Constitution in *Katz v. United States*, 389 U.S. 347. The electronic eavesdropping occurred prior to December 18, 1967, when the *Katz* decision was announced. The United States Supreme Court held that the *Katz* case would be regarded as prospective only in its application to eavesdropping which would have been constitutionally permissible under prior decisions of the Courts, and that the *Katz* case rule would be applied only to eavesdropping occurring after that date, quoting from *Stovall v. Denno*, 388 U.S. 293, 297:

> "[T]he criteria guiding resolution of the question implicate (a) the purpose to be served by the new standards, (b) the extent of the reliance by law enforcement authorities on the old standards, and (c) the effect of the administration of justice of a retroactive application of the new standards."

As pointed out in footnote number 24 to the decision, the holding of the *Katz* case was prospective as to all electronic eavesdropping except for that which involved Mr. Katz.

The prospective application of the rule in *Desist v. United States* was applied to uphold a state court conviction in *Kaiser v. New York*, 37 Law Week 4236, docket number 62, decided the same day.

Linkletter v. Walker, 381 U.S. 618, 14 L. ed. 2d 601, 85 S. Ct. 1731, involved a prisoner who was convicted of burglary on the basis of evidence under circumstances which would violate the rule set out in *Mapp v. Ohio*, 367 U.S. 643, but which was obtained prior to that decision and within the rule laid down by *Wolf v. Colorado*, 338 U.S. 25, which the *Mapp* decision overruled. The Court held that the *Mapp* case was prospective only in the overruling and that the prisoner's conviction would not be overturned. Mr. Justice Clark, in the opinion of the Court, cited *Chicot County Drainage District v. Baxter State Bank*, 308 U.S. 371, 84 L. ed. 329, 60 S. Ct. 317: "that the effect of the subsequent ruling on invalidity on prior final judgments when collaterally attacked is subject to no set 'principal of absolute retroactive invalidity' but depends upon a consideration of 'particular relations . . . and particular conduct . . . of rights claimed to have become vested, of status, of prior determinations deemed to have finality'; and 'of public policy in the light of the nature of both the statute and of its previous application'."

The Court further declared: "Thus the accepted rule today is that in appropriate cases the Court may in the interest of justice make the rule prospective." The Court continued with discussion of the circumstances under which a decision should be given prospective effect only; one of the major considerations was that a retroactive decision would not correct the abuses that had occurred while the rule of *Wolf v. Colorado* was in force.

"Nor can we accept the contention of petitioner that the *Mapp* rule should date from the date of the seizure there, rather than that of the judgment of this Court. The date of the seizure in *Mapp* has no legal significance. It was the

judgment of this Court that changed the rule and the date of that opinion is the crucial date. In the light of the cases of this Court this is the better cutoff time."

Chicot County Drainage District v. Baxter State Bank, 308 U.S. 371, 84 L. ed. 329, 60 S. Ct. 317, held that a bondholder of a bankrupt drainage district was bound by a proceeding in bankruptcy of which he had notice even though, subsequent to the proceeding, the statute under which the bankruptcy proceeding was held was declared unconstitutional. As part of the bankruptcy proceeding a plan of readjustment of the district's indebtedness was adopted under which the Reconstruction Finance Corporation bought certain bonds upon their issuance by the district with the approval of the court and also bought certain previously issued bonds of the district from the holders.

In *Great Northern Railway Co. v. Sunburst Oil & Refining Co.*, 287 U.S. 358, 364, 77 L. ed. 360, 366, 553 S. Ct. 145, 85 A.L.R. 254, Mr. Justice Cardozo declared:

> "This is a case where a court has refused to make its ruling retroactive, and the novel stand is taken that the Constitution of the United States is infringed by the refusal.
>
> "We think the Federal Constitution has no voice upon the subject. A state in defining the limits of adherence to precedent may make a choice for itself between the principal of forward operation and that of relation backward."

Nature of Requested Prospective Application

At present there is no sufficient guide for judicial decision by courts in the fourteen states mentioned above to deter-

mine whether, and to what extent, a decision by this Court reversing the trial court would have prospective or retroactive effect. Yet decisions on this very question would probably be necessary in each of those states before its political sub-divisions could issue any more bonds required by state law to be approved by vote of the electors who meet taxpayer or property-ownership requirements. Without an authoritative declaration by this Court, the supreme courts of the states involved may well come up with a number of different and conflicting views as to whether the decision of this Court is prospective and, if so, whether it will apply to (a) elections already held when some but not all bonds have been issued, (b) elections already held when no bonds have been issued, (c) elections which have been called but not yet held, or (d) elections which will be held before the state legislature can amend the pertinent laws or the states can amend their pertinent constitutional provisions. As to elections held, but where bonds have not been issued, construction contracts may or may not have been let in anticipation of the proceeds of the bonds, and the bonds themselves may have been sold to dealers who may have resold them to investors, subject to final delivery when the bonds are printed and executed.

The following appears in footnotes 1 and 2 to the dissenting opinion of Mr. Justice Fortas in *Desist v. United States*, 37 Law Week 4234:

> "*Linkletter* held that the Court's decision in *Mapp v. Ohio*, 367 U.S. 643 (1961), that illegally seized evidence was not admissible in state prosecutions, should not be applied 'retroactively.' In *Tehan v. Shott*, 382 U.S. 406 (1966), the Court held that its decision in *Griffin v. Cali-*

fornia, 380 U.S. 609 (1965), that it violates the privilege against self-incrimination for the prosecution or the trial judge to comment on a criminal defendant's failure to testify in his defense, should not apply 'retroactively.' *Johnson v. New Jersey*, 384 U.S. 719 (1966), held that *Escobedo v. Illinois*, 378 U.S. 478 (1964), and *Miranda v. Arizona*, 384 U.S. 436 (1966) should not apply 'retroactively.' *Stovall v. Denno*, 388 U.S. 293 (1967), held that *United States v. Wade*, 388 U.S. 218 (1967), and *Gilbert v. California*, 388 U.S. 263 (1967), both of which related to the right to counsel at a pretrial lineup, should not be applied 'retroactively.' In *DeStefano v. Woods*, 392 U.S. 631 (1968), the Court held that the right to trial by jury in state criminal prosecutions that had been established in *Duncan v. Louisiana*, 391 U.S. 145 (1968), and *Bloom v. Illinois*, 391 U.S. 194 (1968), was not 'retroactive.' Finally, the Court held in *Fuller v. Alaska*, 393 U.S. 80 (1968), that *Lee v. Florida*, 392 U.S. 378 (1968) was not 'retroactive.' Lee ruled that evidence obtained in violation of §605 of the Federal Communications Act of 1934, 48 Stat. 1103, 47 U.S.C. §605, was inadmissible in state criminal prosecutions.

"The meaning of 'prospectivity' or 'non-retroactivity' has varied in the Court's decisions. In *Linkletter v. Walker, supra*, n. 1, and *Tehan v. Shott, supra*, no. 1, *Mapp* and *Griffin* were said not to apply to convictions that had become final prior to the announcement of those decisions. But *Mapp* and *Griffin* were applied to cases pending on direct review at the time of those decisions. *Johnson v. New Jersey, supra*, n. 1, by contrast, held *Miranda* and *Escobedo* applicable only to trials begun after Miranda and Escobedo were announced. *Stovall v. Denno, supra*, n. 1, held that the *Wade* and *Gilbert* decisions should apply only to cases in which the illegal official conduct took place after the date of decision. *DeStefano v. Woods, supra*, no. 2, held that *Duncan* and

Bloom should apply only to cases where the trial commenced after the date of decision, a date which, since these cases involved the right to jury trial, was apt to coincide with the date of the official conduct. *Fuller v. Alaska, supra*, n. 1, held that *Lee v. Florida, supra*, no. 1, would apply only in cases in which the illegally-obtained evidence was introduced after the date of decision. In all of these cases, the new rule was applied also in the case in which it was announced."

An excellent article by Chief Justice Schaefer of the Illinois Supreme Court entitled "The Control of 'Sunbursts': Techniques of Prospective Overruling" in 42 N.Y.U.L. Rev. 631 (1967) gives an illuminating discussion of the various aspects of applying a judicially announced change in the rules which, in the past, had been obeyed as law.

In this article Justice Schaefer discusses the *Linkletter* case as well as two other recent decisions of the Supreme Court of the United States which decided that rules enunciated in previous cases involving the rights of persons tried for crimes had prospective effect only. The author suggests that the determination of whether a newly announced rule should be given prospective or retroactive effect should be made promptly, pointing out that until this determination is made "other courts will have to act, often irrevocably, upon their guesses as to the ultimate answer. If reargument on the question of prospectivity is desired, reargument can be had—but before the decision comes down."

In concluding his article Justice Schaefer says:

"But prospective overruling is still a rather novel technique and the manner of its use by the Supreme Court in these three cases may influence the directions

of its future growth. Sound growth can be promoted and erratic results avoided by focusing attention on the element of reliance that justifies the technique. Even when that is done there will not always be agreement as to the quality or degree of reliance that justifies a particular prospective limitation. But the area of disaffection will be narrowed if time before and time after are measured from the moment of reliance."

It is submitted that in the type of case here involved several elements of reliance on previously accepted notions of equality should be considered:

First is the reliance of the state in adopting its constitutional or statutory provisions which require that only taxpayers may vote in bond elections. Disappointment in such reliance can result in preventing the issuance of future bonds by political sub-divisions in those states until either amendments to the pertinent constitutional or statutory provisions are adopted or the state supreme court determines under what circumstances bonds can lawfully be issued under state law.

Second is the reliance of the governing bodies of political sub-divisions, in calling, giving notice of, and holding bond elections and in determining the class of voters to whom to submit the propositions. Disappointment in such reliance can render each step of said procedure void.

Third is the reliance of the voters in believing that all bonds voted could be issued in order to pay for a complete project. Disappointment in such reliance, where some bonds of a total voted authorization have been issued and others have yet to be issued, can result in the voters incurring an obligation for a project which may never be completed.

Fourth is the reliance of the bondholders in accepting bonds voted and issued under state law. Disappointment in such reliance can render the bonds void and uncollectible.

In *State v. Martin*, 62 Wash. 2d 645, 384 P.2d 833, decided August 7, 1963, the Supreme Court of Washington reached the conclusion that it should overrule an earlier case decided by that court (*Gruen v. State Tax Commission*, 35 Wash. 2d 1, 211 P.2d 651) in so far as the earlier case purported to "hold that the issuance and sale of limited obligation bonds funded by excise taxes on the sales and handling of cigarettes did not contravene Article 8, Sections 1 and 3, of the State Constitution, and as to all future enactments cognizable under the debt limitation ruling of that case, we declare it is no longer the law." The Court pointed out that it had indicated it might overrule the *Gruen* case in *Washington Toll Bridge Authority v. Yelle*, 161 Wash. Dec. 26, 377 P. 2d 466, decided December 13, 1962, and also mentioned that bonds had been authorized at the 1961 and 1963 sessions of the Legislature, as well as at prior sessions, without a state-wide election, and that some but not all of the bonds authorized at the 1961 session had been issued. Contracts had been let to spend some of the money which would be derived from the sale of some of the bonds of the 1961 authorization theretofore unissued.

The Court then discussed at some length the reasons and authority for making its decision prospective only.

At 384, P. 2d 845, the Court declared:

> "If rights have vested under a faulty rule, or a constitution misinterpreted, or a statute misconstrued or

> where, as here, subsequent events demonstrate a ruling to be in error, prospective overruling becomes a logical and integral part of stare decisis by enabling the courts to right a wrong without doing more injustice than is sought to be corrected. By means of this doctrine, courts of the most prudent and careful tradition can move boldly to right the very wrong they have traditionally been perpetuating under the old, rigidly applied, single minded view of the doctrine of stare decisis. The courts can act to do that which ought to be done, free from the fear that the law itself is being undone."

The Washington Supreme Court held that the bonds of the State of Washington which had been issued in reliance upon the overruled decision and the bonds to be issued under the laws adopted in 1961 would be valid and should be issued in accordance with the terms of the statutes authorizing them; but certain bonds payable from the same source authorized by the 1963 session of the Legislature would put the state in debt beyond its constitutional debt limit, and should therefore be issued only if carried by vote of the people.

CONCLUSION

The decision of the trial court should be upheld. If reversed, however, the Court should declare whether the rule requiring such reversal applies to revenue bonds alone or to bonds payable from ad valorem taxes, in whole or in part, and should further declare that such rule will be applied only to elections called after the date of the decision and that bond elections held or called prior to such date will not be affected thereby.

Respectfully submitted,

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CERTIFICATE

I, the undersigned counsel for petitioner, Louisiana Municipal Association, do hereby certify that a copy of the foregoing brief has been served on all counsel in this matter by depositing a copy thereof in the United States Mail, postage prepaid, addressed to each of them at his respective address of record.

Baton Rouge, Louisiana, this ___ day of _____, 1969.

_____

John V. Parker